

**DEPARTMENT OF STATE REVENUE  
LETTER OF FINDINGS NUMBER: 03-0191  
Sales and Use Tax  
For The Tax Period 1999-2001**

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**ISSUES**

**I. Sales and Use Tax - Imposition**

**Authority:** IC 6-2.5-2-1, IC 6-8.1-5-1 (b), IC 6-8.1-5-4, IC 6-2.5-8-8.

The taxpayer protests the assessment of sales and use tax.

**II. Tax Administration- Ten Percent (10%) Negligence Penalty**

**Authority:** IC 6-8.1-10-2.1, 45 IAC 15-11-2 (b).

**STATEMENT OF FACTS**

The taxpayer is a corporation doing business as a retail jewelry store. After an audit, the Indiana Department of Revenue, hereinafter referred to as the "department," assessed additional sales and use tax, interest, and penalty for the tax period 1999-2001. The taxpayer protested a portion of the sales tax assessment and the penalty. A hearing was held and this Letter of Findings results.

**1. Sales and Use Tax -Imposition**

**DISCUSSION**

Indiana imposes a sales tax on the transfer of tangible personal property in a retail transaction. The sellers of the property are required to collect the sales tax from the purchasers and remit that tax to the state. IC 6-2.5-2-1.

Pursuant to IC 6-8.1-5-1 (b), all tax assessments are presumed to be accurate and the taxpayer bears the burden of proving that any assessment is incorrect. Taxpayers have a statutory duty to keep records as set out at IC 6-8.1-5-4 as follows:

Every person subject to a listed tax must keep books and records so that the department can determine the amount, if any, of the person's liability for that tax by reviewing those books and records. The records in this subsection include all source documents necessary to determine the tax, including invoices, register tapes, receipts, and canceled checks.

The taxpayer claimed that many sales were exempt from the sales tax.

IC 6-2.5-8-8 provides for exemption certificates from sales tax in pertinent part as follows:

(a) A person, authorized under subsection (b), who makes a purchase in a transaction which is exempt from the state gross retail and use taxes, may issue an exemption certificate to the seller instead of paying the tax. The person shall issue the certificate on forms and in the manner prescribed by the department. A seller accepting a proper exemption certificate under this section has no duty to collect or remit the state gross retail or use tax on that purchase.

The taxpayer did not have exemption certificates for these sales. Therefore, they were properly included in the taxpayer's total sales subject to Indiana sales tax.

The taxpayer's sales tax liability was computed by preparing a schedule comparing the taxpayer's taxable sales invoices to the taxpayer's sales tax returns filed with the department. Sales without exemption certificates were separately identified. The taxpayer was given credit for all sales that had been reported to the state. The taxable sales were totaled and tax assessed.

The taxpayer claimed that this method did not fairly and accurately reflect the actual amount of sales tax due to Indiana. To prove this contention, the taxpayer presented sales recap sheets for the tax period. The taxpayer asserted that these recap sheets indicate that there were many refunds and returns that lowered the total amount of sales against which tax should be assessed. The taxpayer did not produce source documents such as invoices or receipts to back up the recap sheets as required by the law. Therefore, the recap sheets are inadequate to sustain the taxpayer's burden of proof.

### **FINDING**

The taxpayer's protest to the assessment of sales tax is denied.

## **II. Tax Administration- Ten Percent (10%) Negligence Penalty**

### **DISCUSSION**

The taxpayer protests the imposition of the ten percent (10%) negligence penalty pursuant to IC 6-8.1-10-2.1. Indiana Regulation 45 IAC 15-11-2 (b) clarifies the standard for the imposition of the negligence penalty as follows:

Negligence, on behalf of a taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer. Negligence would result from a taxpayer's carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana Code or department regulations. Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to read and follow instructions provided by the department is treated as negligence. Negligence shall be determined on a case by case basis according to the facts and circumstances of each taxpayer.

The taxpayer disregarded its duty to keep adequate records of its sales and sales tax collected. The taxpayer's inattention to this duty resulted in a substantial under remittance of sales tax to the state. This breach of the taxpayer's duty constitutes negligence.

### **FINDING**

The taxpayer's protest to the imposition of the negligence penalty is denied.